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SUPREME COURT, U.S.

No. 05-917

IN THE SUPREME COURT OF THE UNITED STATES

JAMES E. ALLISON and FLORA ALLISON,

Petitioners,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Washington

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the Court lack jurisdiction over the propriety of jury selection because petitioners did not raise due process under the United States Constitution before the trial court, and the Washington appellate courts declined to decide the issue based on state law procedural grounds?

2. Does the Court lack jurisdiction over the propriety of jury selection because the petition was filed more than 90 days after the Washington Supreme Court's Ruling Denying Extension issued on September 16, 2003?

3. Does the Court lack jurisdiction over Flora Allison's entitlement to attorneys fees because petitioners did not raise the issue of Mrs. Allison's independent claim for fees before the trial court, and failed to raise due process or equal protection under the United States Constitution before any state court?

4. Have petitioners failed to provide argument, authorities, or a factual record supporting any constitutional violation.

LIST OF PARTIES AND RULE 29.6 DISCLOSURE STATEMENT

The caption of the case contains the names of all parties.

Respondent State Farm Mutual Automobile Insurance Company is an Illinois Corporation. It has no parent corporation, and no publicly held company owns more than 10% of its stock.

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STATEMENT OF THE CASE

This lawsuit arises out of an incident of road rage on December 5, 1997. Petitioner James Allison assaulted Robert and Beverly Linkletter with his vehicle. Mr. Allison pursued the Linkletters and deliberately drove his van into the Linkletters' vehicle because he believed Mr. Linkletter had cut him off at a stop light. The Linkletters' insurance company sued petitioners for property damage caused by the assault. Petitioners then sued their insurance company, State Farm. Eventually, judgment was entered by agreement against Mr. Allison, only, for the damage. Petitioners' claims against State Farm went to trial on June 25, 2001, in King County District Court, a court with a maximum jurisdictional amount at the time of $35,000.

Jury voir dire was conducted on June 25, 2001. (Petitioner's App. A) Initially the court asked the jurors if they had heard of respondent "State Farm Mutual Automobile Insurance Company", and than broadened the question to ask "who has not heard of State Farm Insurance?" Petitioner's counsel asked the panel "whether or not you have State Farm as an insurance company now"? Jurors 1, 5, 6, and 11 raised their hands. He then asked "have any of you had State Farm as your insurance company for home, auto, life, or any insurance in the past?" Jurors 12, 14, and 15 raised their hands. Petitioners' counsel never asked the jurors if they had

insurance policies with State Farm Mutual Automobile Insurance Company, nor did he specifically ask them if they had automobile insurance policies with "State Farm". (Petitioners' App. A at i-iv)

Jurors were never asked whether their insurance company was State Farm Mutual Automobile Insurance Company, as opposed to a State Farm company that is not a mutual organization such as State Farm Fire and Casualty Company. Nor were jurors asked whether they knew they might be eligible to receive dividends, let alone whether they had ever received dividends. Further, no one asked them whether their policies were assessable, *i.e.*, whether they were liable for additional premiums if losses were unusually large. This question is significant, because some mutual companies are assessment mutuals, whose policyholders are bound to pay a proportional share of all losses and expenses of the company. 3 L. Russ & T. Segalla, COUCH ON INSURANCE 3D § 39:17 (1995). Other mutual companies, called "advance-premium mutuals," operate similarly to stock companies in that they collect most or all of the cost of the insurance in premiums when the policies are issued. *Id.* § 39:16.

Petitioners' counsel challenged for cause jurors 4, 5 and 6. The challenges were denied. Later, after the jury was sworn, petitioners' counsel attempted to object to the jury, claiming he had earlier challenged jurors 1, 5, 6 and 11. (Petitioner's App. A at v) At that time, petitioners' counsel

argued: "[T]hese people have an economic interest because it's possible they would think that with a decision against State Farm, possible, here, their insurance rates could go up and being current policyholders, that could affect them." He did not mention due process or the United States Constitution. The objection was overruled. (*Id* at vi)

The next day, petitioner's counsel raised jury selection again. He did not mention due process or the United States Constitution. For the first time, he referred to respondent as a mutual insurance company. He referred to a Washington court of appeals case, *Dean v. Group Health Cooperative of Puget Sound*, 62 Wash. App. 829, 816 P.2d 757 (1991). *Dean* affirmed the trial court's denial of challenges to jurors for cause based on a Washington statute, RCW 4.44.180(4), and did not mention due process or the United States Constitution. *Dean*, 62 Wash. App. at 835-36. In the instant case, the trial court again overruled petitioners' objection. In doing so, the court noted petitioners had not timely challenged for cause two of the four jurors (1 and 11) with current policies with State Farm, nor had they exercised peremptory challenges on the two (5 and 6) they did challenge. (Petitioners' App. B)

The jury issued verdicts on July 6, 2001, and the court entered judgment on August 9, 2001. (Petitioners' App. D at ii) Petitioners appealed to King County Superior Court. Petitioners did not mention due process or the United States Constitution. On July 11, 2002, the superior court affirmed,